Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1812

HEATHER ELIZABETH O'DONNELL, and KATHLEEN ANNE O'DONNELL, MICHAEL BRENT O'DONNELL, and TIMOTHY HUGH O'DONNELL, by their next friend, HEATHER ELIZABETH O'DONNELL,
Appellants,
v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois Insurance Corporation,
Appellee.

MOTION TO DISMISS APPEAL AND BRIEF IN SUPPORT

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v.
STATE FARM MUTUAL AUTOMOBILE INSURANCE COMPANY, an Illinois Insurance Corporation,
Appellee.

MOTION TO DISMISS APPEAL

Now comes appellee State Farm Mutual Automobile Insurance Company by its attorneys, Bodman, Longley & Dahling, and moves that the Court dismiss the appeal in the above-entitled action for the reasons stated in the accompanying brief.

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TABLE OF CONTENTS

	Page
INDEX TO AUTHORITIES	i
INTRODUCTION	1
ARGUMENT	1
Due Process Claim	4
Equal Protection	10
CONCLUSION	16

INDEX TO AUTHORITIES

Cases:

Califano v Boles, 47 USLW 4874, — US —, — S Ct —, — L Ed — (1979) 4

City of Charlotte v Local 660, International Association of Firefighters, 426 US 283, 96 S Ct 2036, 48 L Ed 2d 636 (1976) 13

Dandridge v Williams, 397 US 471, 90 S Ct 1153, 25 L Ed 2d 491 (1970) 10,11,14

Katzenbach v Morgan, 384 US 641, 86 S Ct 1717, 16 L Ed 2d 828 (1966) 9

Massachusetts Board of Retirement v Murgia, 427 US 307, 96 S Ct 2562, 49 L Ed 2d 520 (1976) .. 15

McAvoy v H B Sherman Co, 401 Mich 419, 258 NW2d 414 (1977) 9

Nebbia v New York, 291 US 502, 54 S Ct 505, 78 L Ed 940 (1934) 4

Page

New Orleans v Dukes, 427 US 297, 96 S Ct 2513, 49 L Ed 2d 511 (1976) 9

Ohio Bureau of Employment Services v Hodory, 431 US 471, 97 S Ct 1898, 52 L Ed 2d 513 (1977) 15

Ex Parte Poresky, 290 US 30, 54 S Ct 3, 78 L Ed 152 (1933) 6

Richardson v Belcher, 404 US 78, 92 S Ct 254, 30 L Ed 2d 231 (1971) 10

Sears v Cottrell, 5 Mich 250 (1858) 14

Weinberger v Salfi, 422 US 749, 95 S Ct 2457, 45 L Ed 2d 522 (1975) 11,14

West Coast Hotel v Parrish, 300 US 379, 57 S Ct 578, 81 L Ed 703 (1937) 4

Williamson v Lee Optical of Oklahoma, 348 US 483, 75 S Ct 461, 99 L Ed 563 (1955) 4

Statutes:

MCLA 500.3101, MSA 24.13101 (A89) 1

MCLA 500.3108, MSA 24.13108 (A91) 2

MCLA 500.3109, MSA 24.13109 2,5,7,8,15,16

MCLA 500.3109a, MSA 24.13109(1) (A91-A92) 12,15

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BRIEF IN SUPPORT OF MOTION TO DISMISS APPEAL

ARGUMENT

Introduction

Michigan's no-fault automobile insurance act, MCLA 500.3101, *et seq.*, MSA 24.13101, *et seq.*, became effective October 1, 1973.

On February 19, 1974, appellants' decedent, Gary B. O'Donnell was killed in an automobile accident. Mr. O'Donnell carried a no-fault auto insurance policy

issued by appellee State Farm Mutual Automobile Insurance Company in accordance with the Michigan no-fault act.

As survivors of the decedent, appellants were entitled to survivors' benefits pursuant to the terms of the no-fault policy and section 3108 of the no-fault act, MCLA 500.3108, MSA 24.13108. (A91)*.

Appellants were entitled to the maximum amount of survivors' benefits payable pursuant to section 3108, $1,000 per month for three years, but subject to the requirement of the no-fault policy** and section 3109(1) of the no-fault act, MCLA 500.3109(1), MSA 24.13109(1)***, that benefits provided to appellants under the laws of any state or federal government be subtracted from their no-fault survivors' benefits.

Because appellants were entitled to federal social security survivors' benefits, State Farm, pursuant to section 3109(1) and in accordance with its insurance policy, subtracted from each monthly no-fault benefit

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*Section 3108 has been amended to provide cost of living increases in survivors' benefits. See 1978 PA 459. The amendment, adopted after appellants' claim arose, is not applicable to appellants' benefits.

"Any amount payable by the company under the terms of this insurance shall be reduced by (a) the amount paid, payable or required to be provided under the laws of any state or federal government *." (Op. Michigan Supreme Court, A3).

***"(1) Benefits provided or required to be provided under the laws of any state or the federal government shall be subtracted from the personal protection insurance benefits otherwise payable for the injury."

payment to appellants the amount of social security benefits payable to them.

Appellants claim that the subtraction of social security benefits from no-fault benefits which State Farm is compelled to make denies them due process of law. They further claim that since the no-fault act does not require a similar reduction of no-fault benefits on account of other private insurance benefits received, that they are denied equal protection of the laws. Both claims are made pursuant to the Fourteenth Amendment to the Constitution of the United States. (A89).

The Michigan Supreme Court determined that the required subtraction of governmental benefits does not contravene appellants' constitutional rights to due process and equal protection because there is a rational legislative purpose served by the requirement. 404 Mich 524, — NW2d — (1979). (A1).

Appellants have appealed that decision to this Court.

State Farm contends, as the Michigan Supreme Court found, that the statutorily required subtraction of governmental benefits is manifestly rational. It furthers the legitimate legislative objective of keeping the cost of mandatory no-fault insurance within the reach of the citizens of Michigan while, at the same time, guaranteeing a basic amount of survivors' benefits whether they be no-fault benefits alone or a combination of no-fault benefits and governmental benefits. The differing treatment of governmental benefits and private insurance benefits furthers the legitimate legislative goal of permitting those no-fault insureds who wish to do so to increase their coverage by purchasing additional private insurance.

State Farm, therefore, moves that this appeal be dismissed because no substantial federal question has been raised by appellants.

Due Process Claim

For the past 40 years the test for determining whether social and economic legislation meets the requirements of substantive due process has been whether the challenged law has a rational relation to a valid state objective.

Thus, this Court stated in *West Coast Hotel* v *Parrish*, 300 US 379, 391, 57 S Ct 578, 581-582, 81 L Ed 703 (1937):

> "*** Liberty under the Constitution is thus necessarily subject to the restraints of due process, and regulation which is reasonable in relation to its subject and is adopted in the interests of the community is due process."

In *Williamson* v *Lee Optical of Oklahoma*, 348 US 483, 488, 75 S Ct 461, 464, 99 L Ed 563 (1955), this Court stated:

> "*** But the law need not be in every respect logically consistent with its aims to be constitutional. It is enough that there is an evil at hand for correction, and that it might be thought that the particular legislative measure was a rational way to correct it."

See also *Nebbia* v *New York*, 291 US 502, 529-537, 54 S Ct 505, 512-516, 78 L Ed 940 (1934), and *Califano* v *Boles*, 47 USLW 4874, — US —, — S Ct —, — L Ed — (1979).

It was argued to the Michigan Court of Appeals and to the Michigan Supreme Court that section 3109(1) violates due process principles because it could be interpreted to require the subtraction from no-fault benefits of any governmental benefits, regardless whether the governmental benefits were payable as a result of the same loss for which the no-fault benefits were paid.

Thus, there was speculation whether no-fault benefits might be reduced by governmental retirement benefits. See, e.g., the concurring opinion of Judge Brennan in the decision of the Michigan Court of Appeals, 70 Mich App 487, 500, 245 NW2d 801, 805 (1976). (A75).

The Michigan Supreme Court met this argument by reviewing the legislative history of section 3109(1) and by holding that the section required the subtraction of only those governmental benefits which duplicate no-fault benefits payable because of an auto accident. (A8).

The Michigan Supreme Court then analyzed section 3109(1), as thus interpreted, in light of the applicable due process test:

> "This set-off is not arbitrary and it does have a rational basis. It promotes the valid legislative objectives of insuring payment for economic loss up to $1,000 per month for three years and of attempting to reduce or contain the cost of no-fault insurance by eliminating some of the benefit duplication that would otherwise occur. This means chosen, a set-off of duplicative government benefits, is rationally related to that end. It reduces the amount that the insurance companies must pay out, making it possible for

> them to reduce the amount that they must charge, and it does so only in those situations where the benefits are redundant. * * *'' (A10).

Appellants make no claim that it is an invalid exercise of the legislative police power to require motorists to carry insurance to protect themselves and others in the case of accident. That issue was decided long ago. See *Ex Parte Poresky*, 290 US 30, 54 S Ct 3, 78 L Ed 152 (1933). An equally supportable constitutionally permissible legislative objective is to reduce the cost of such mandatory insurance coverage so that the poor are not prohibited from owning and using automobiles.

The only question remaining, then, is whether there is a rational relationship between the subtraction of governmental benefits and the twin, but competing, purposes of providing a substantial survivors' benefit to dependents of auto accident victims while at the same time reducing the cost of the insurance coverage to the extent possible.

One method of reducing insurance premiums, of course, is to reduce the level of benefits. As the Michigan Supreme Court found, the Michigan Legislature weighed the cost/benefit ratio in determining that the optimum required survivors' benefit should be $1,000 per month for a duration of three years. While reducing the benefit would reduce cost, it would directly conflict with the legislative goal of providing the optimum benefit. Other cost-reducing means to reduce no-fault premium costs were available to the Legislature. The one it chose was to make the no-fault coverage secondary to other governmental

benefits payable as a result of the insured's death. Thus, the no-fault survivors' benefit was made payable by the no-fault insurer to the extent necessary to bring the survivors' total benefits from public and no-fault insurance sources up to the amount determined by the Legislature to be adequate compensation for the economic loss of the survivors.

By so utilizing the virtually universal social security survivors' benefit, the no-fault insurance premium required to fund the survivors' benefits was reduced because insurance premiums, of course, vary directly with the risk insured. Thus, because most Michigan motorists are subject to two mandatory insurance programs, no-fault and social security, the governmental set-off in the no-fault act assures that the motorist is not charged for duplicative coverage.

On its face, section 3109(1) serves legitimate legislative goals of providing the highest feasible level of benefits at the lowest premium cost to the insured.

In spite of this analysis, however, appellants contend that the Michigan Supreme Court erred in determining that the social security survivors' benefits were "duplicative" of the no-fault survivors' benefits payable but for the required set-off. They contend that their loss was in excess of $1,000 per month and that the social security survivors' benefits, therefore, did not "duplicate" the no-fault benefits in compensating the actual loss as a matter of fact.

Assuming, *arguendo*, that appellants' loss exceeded $1,000 per month, although that fact is not in the record, the due process test requires no different result.

Due process does not require that the Michigan no-fault act provide compensation for every survivor's actual loss. It is surely a legislature's prerogative to determine the amount of coverage to be required under a mandatory no-fault insurance act. In making that decision, a legislature is entitled to consider other sources of economic benefits generally, if not universally, available to survivors, e.g., as in this case, social security survivors' benefits. The Michigan Legislature's set-off provision in section 3109(1) of the act is a simple mechanism to assure that no more than the amount so determined by the Legislature as a mandatory benefit coverage be payable.

The legislative purpose was to require motorists to carry survivors' coverage in an adequate amount, and that amount was determined by Michigan's Legislature to be the actual loss up to a maximum of $1,000 per month for three years. The set-off for governmental benefits insures that a no-fault insured's survivors will receive compensation for their actual loss up to the maximum amount determined by the Legislature to be adequate, through a combination of governmental and no-fault benefits.

Nothing in due process requires that the Legislature have as its purpose the actual compensation of all losses by a mandatory insurance program.

This Court long has upheld a legislature's prerogative in making such determinations as the amount of an economic benefit mandated by statute. Michigan's Supreme Court summarized this Court's and its own

acknowledgment of that prerogative in the following passage from its *O'Donnell* opinion (A7):

> "Nor is it necessary that the Legislature deal with every aspect of a problem at the same time:
>
> > " '[W]e are guided by the familiar principles that a "statute is not invalid under the Constitution because it might have gone farther than it did," * * * that a legislature need not "strike at all evils at the same time," * * * and that "reform may take one step at a time, addressing itself to the phase of the problem which seems most acute to the legislative mind" * * *.' [Citing *Katzenbach* v *Morgan*, 384 US 641, 657, 86 S Ct 1717, 16 L Ed 2d 828 (1966); *New Orleans* v *Dukes*, 427 US 297, 305, 96 S Ct 2513, 49 L Ed 2d 511 (1976)].
>
> "In short, we do not sit 'as a superlegislature to judge the wisdom or desirability of legislative policy determinations'. [Citing *New Orleans* v *Dukes, supra*, 303]. We sit as a court to determine whether there is a rational basis for the Legislature's judgment. If there is, then that judgment must be sustained:
>
> > " 'It is *not* this Court's role to decide whether the Legislature acted wisely or unwisely in enacting this statute. We will not substitute our own social and economic beliefs for those of the Legislature, which is elected by the people to pass laws.' " [Citing *McAvoy* v *H B Sherman Co.*, 401 Mich 419, 439, 258 NW2d 414 (1977)]. 404 Mich at 543, —— NW2d at ——.

Appellants' argument concerning duplication of benefits presupposes that the Court's role in reviewing this case is to decide whether Michigan's Legislature should have permitted the receipt of both governmental and private benefits in excess of $1,000 per month if the amount of loss is not overcompensated. But such an argument ignores the Legislature's right to determine the amount of no-fault benefits for which it requires motorists to pay.

The sole due process question is whether the Legislature rationally could reduce the cost of no-fault coverage by setting off duplicative governmental benefits. State Farm submits that the answer to that question is self-evident and that no substantial federal due process question has been presented by appellants.

Equal Protection

Appellants also contend that principles of equal protection are offended because section 3109(1) requires the subtraction of governmental benefits which duplicate no-fault survivors' benefits, but does not likewise require subtraction of duplicative private insurance benefits.

The test applicable to economic and social legislation under equal protection principles was stated in *Richardson* v *Belcher*, 404 US 78, 81-84, 92 S Ct 254, 257-258, 30 L Ed 2d 231 (1971):

> "A statutory classification in the area of social welfare is consistent with the Equal Protection Clause of the Fourteenth Amendment if it is 'rationally based and free from invidious discrimination.' *Dandridge* v *Williams*, 397 US 471, 487, 90 S Ct 1153, 1162, 25 L Ed 2d 491.

> While the present case, involving as it does a federal statute, does not directly implicate the Fourteenth Amendment's Equal Protection Clause, a classification that meets the test articulated in *Dandridge* is perforce consistent with the due process requirement of the Fifth Amendment. * * *
>
> * * *
>
> "If the goals sought are legitimate, and the classification adopted is rationally related to the achievement of those goals, then the action of Congress is not so arbitrary as to violate the Due Process Clause of the Fifth Amendment."

See also *Dandridge* v *Williams*, 397 US 471, 485, 90 S Ct 1153, 25 L Ed 2d 491 (1970); and *Weinberger* v *Salfi*, 422 US 749, 769, 95 S Ct 2457, 45 L Ed 2d 522 (1975).

State Farm already has identified the legislative goals which justify constitutionally the Michigan Legislature's set-off of governmental benefits in section 3109(1). The remaining question to be considered under equal protection principles is, therefore, whether there are any rationally discernible differences between governmental and private insurance benefits which justify their different treatment in light of the permissible legislative purpose of reducing insurance premiums for mandatory no-fault coverages.

In simplest terms, was the Michigan Legislature constitutionally required either to set off both governmental and private duplicative benefits against no-fault benefits or to set off neither?

If both governmental and private benefits were set off, no-fault insureds could not economically increase

their survivors' benefits to the extent their needs and incomes warrant. As pointed out by the Michigan Supreme Court (A12), a set-off of private as well as governmental benefits would require that in order to increase their total survivors' benefits payable because of an auto accident, no-fault insureds first would have to purchase private insurance benefits of $1,000 per month to be set off against the no-fault benefits, and then, in addition, purchase the amount of coverage in excess of the no-fault maximum which the insured desires.

It obviously would be economically illogical and wasteful to require private benefits to be set off because it would force those wishing to purchase increased survivors' benefits to waste the premium paid for the first $1,000 per month in increased benefits.

Appellants recognize the truth in this statement (Jurisdictional Statement, p. 13), but contend that the Legislature could just as easily have made the set-off of governmental benefits optional with the insured as was later done with private benefits.*

There are two answers to appellants' contention. First, the benefits under social security are set by statute and cannot be varied by those covered, whereas the purchaser of private benefits may seek out the insurer which offers the benefits best tailored to his needs for the price he wishes to pay. This difference makes private benefits the logical choice for optional coverage.

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*Section 3109a, MCLA 500.3109a; MSA 24.13109(1), (A91-92), became effective June 3, 1974.

Second, and more importantly, once it is recognized that the Legislature acted rationally in allowing no-fault insureds to purchase coverage in excess of that required by the no-fault act, the applicable principles of equal protection clearly allow the legislature the widest latitude in its choice of method in attaining its objective.

In *City of Charlotte* v *Local 660, International Association of Firefighters*, 426 US 283, 288, 96 S Ct 2036, 2040, 48 L Ed 2d 636 (1976), this Court determined that the city was not constitutionally required to withhold union dues from firemen's pay simply because it had other payroll withholding programs. The Court stated:

> "Given the permissibility of creating standards and the reasonableness of the standards created, the District Court's conclusion that it would be no more difficult for the city to withhold dues for the union than to process other deductions is of no import.* * *"

Thus, the Michigan Legislature was under no constitutional compulsion to provide a complex system of elections concerning collateral benefits to each no-fault insured when its purpose could be substantially attained simply by allowing but not requiring the set-off of private benefits.

The Michigan Supreme Court recognized (A6) this principle in this comprehensive passage:

> "* * * So long as the Legislature's judgment is supported by a rational or reasonable basis, the choices made and the distinctions drawn are constitutional. The United States Supreme Court and our Court have instructed:

> " 'If the classification has some "reasonable basis", it does not offend the Constitution simply because the classification "is not made with mathematical nicety or because in practice it results in some inequality". * * * "The problems of government are practical ones and may justify, if they do not require, rough accommodations * * *" '. [Citing *Dandridge* v *Williams*, 397 US 471, 485, 90 S Ct 1153, 25 L Ed 2d 491 (1970), *Weinberger* v *Salfi*, 422 US 749, 769, 95 S Ct 2457, 45 L Ed 2d 522 (1975)].
>
> " 'If it be said, the law is unnecessarily severe, and may sometimes do injustice, without fault in the sufferer under it, our reply is: these are considerations that may very properly be addressed to the legislature, but not to the judiciary — they go to the expediency of the law, and not to its constitutionality.' [Citing *Sears* v *Cottrell*, 5 Mich 250, 254 (1858)].

"The responsibility for drawing lines in a society as complex as ours — of identifying priorities, weighing the relevant considerations and choosing between competing alternatives — is the Legislature's, not the judiciary's. Perfection is not required:

> " '[T]he drawing of lines that create distinctions is peculiarly a legislative task and an unavoidable one. Perfection in making the necessary classifications is neither possible nor necessary.' [Citing

> *Massachusetts Board of Retirement* v *Murgia*, 427 US 307, 314, 96 S Ct 2562, 49 L Ed 2d 520 (1976); *Ohio Bureau of Employment Services* v *Hodory*, 431 US 471, 489, 97 S Ct 1898, 52 L Ed 2d 513 (1977)]." 404 Mich at 542, —— NW2d at ——.

An observation concerning the relationship of section 3109a of the no-fault act to this case may be appropriate. Section 3109a allows each no-fault insured to choose whether to have other private health and accident benefits set off against no-fault benefits.

Section 3109a was added to Michigan's no-fault act after Mr. O'Donnell's death and, therefore, has no direct application in this case.

The two sections, 3109(1) and 3109a, when considered together, display a comprehensive and reasonable plan under which no-fault coverage is made secondary to governmental benefit programs by section 3109(1), thus reducing what would otherwise be nearly universal double coverage and enabling no-fault insurers to offer reduced rates. At the same time, the no-fault insured is offered a choice by section 3109a either to coordinate his privately purchased health and accident coverage with his no-fault coverage, thus reducing his no-fault premium, or to increase his total insurance coverage by purchasing health and accident coverage which will pay benefits in addition to those provided by no-fault coverage.

It is not unconstitutional discrimination when each no-fault insured's governmental benefits are subtracted from his no-fault benefits (regardless of his economic

status) while at the same time each no-fault insured, with the resources and inclination to do so, is permitted to purchase increased coverage. It is not discrimination when all are simply permitted to purchase what they wish with the resources they have.

CONCLUSION

Appellants assert that this case presents a substantial federal question because the Michigan no-fault act in effect confiscates federal social security benefits for the benefit of Michigan no-fault insurers. That, of course, is a faulty analysis of the Michigan no-fault act and distorts the actions of the Michigan Legislature.

Nothing in the act in any way affects the amount of social security benefits which appellants receive or retain. Section 3109(1) acts solely to adjust no-fault benefits in relation to governmental benefits and nothing more and, as the Michigan Supreme Court perceived, the legislative purpose obviously was to reduce the no-fault premium, not increase the insurer's profits. (A8).

State Farm submits that the due process and equal protection issues asserted by appellants are not substantial because the reduction of no-fault benefits by the amount of duplicative governmental benefits has an obvious relation to legitimate state goals of providing for an adequate level of mandatory insurance benefits for the least cost. The differing treatment provided for private benefits is related rationally to differences between governmental and private benefits and to the goal of allowing no-fault insureds a practical, efficient means to increae their benefits at their own option.

For the foregoing reasons, State Farm requests that this appeal be dismissed.

Respectfully submitted,

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